

REFERENCE TITLE: tax exemption; internet applications

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1340

Introduced by

Senators Bee, Aboud, Aguirre, Arzberger, Blendu, Leff, O'Halleran, Waring;
Representatives McClure, Paton; Senators Flake, Garcia, Gorman, Gould,
Rios, Soltero, Verschoor; Representatives Cajero Bedford, Nelson, Nichols,
Reagan, Robson, Weiers J, Yarbrough

AN ACT

AMENDING SECTIONS 42-5061, 42-5064 AND 42-5071, ARIZONA REVISED STATUTES;
RELATING TO TRANSACTION PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5061, Arizona Revised Statutes, is amended to
3 read:

4 42-5061. Retail classification; definitions

5 A. The retail classification is comprised of the business of selling
6 tangible personal property at retail. The tax base for the retail
7 classification is the gross proceeds of sales or gross income derived from
8 the business. The tax imposed on the retail classification does not apply to
9 the gross proceeds of sales or gross income from:

10 1. Professional or personal service occupations or businesses which
11 involve sales or transfers of tangible personal property only as
12 inconsequential elements.

13 2. Services rendered in addition to selling tangible personal property
14 at retail.

15 3. Sales of warranty or service contracts. The storage, use or
16 consumption of tangible personal property provided under the conditions of
17 such contracts is subject to tax under section 42-5156.

18 4. Sales of tangible personal property by any nonprofit organization
19 organized and operated exclusively for charitable purposes and recognized by
20 the United States internal revenue service under section 501(c)(3) of the
21 internal revenue code.

22 5. Sales to persons engaged in business classified under the
23 restaurant classification of articles used by human beings for food, drink or
24 condiment, whether simple, mixed or compounded.

25 6. Business activity which is properly included in any other business
26 classification which is taxable under article 1 of this chapter.

27 7. The sale of stocks and bonds.

28 8. Drugs and medical oxygen, including delivery hose, mask or tent,
29 regulator and tank, on the prescription of a member of the medical, dental or
30 veterinarian profession who is licensed by law to administer such substances.

31 9. Prosthetic appliances as defined in section 23-501 prescribed or
32 recommended by a health professional licensed pursuant to title 32, chapter
33 7, 8, 11, 13, 14, 15, 16, 17 or 29.

34 10. Insulin, insulin syringes and glucose test strips.

35 11. Prescription eyeglasses or contact lenses.

36 12. Hearing aids as defined in section 36-1901.

37 13. Durable medical equipment which has a centers for medicare and
38 medicaid services common procedure code, is designated reimbursable by
39 medicare, is prescribed by a person who is licensed under title 32, chapter
40 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and
41 customarily used to serve a medical purpose, is generally not useful to a
42 person in the absence of illness or injury and is appropriate for use in the
43 home.

1 14. Sales to nonresidents of this state for use outside this state if
2 the vendor ships or delivers the tangible personal property out of this
3 state.

4 15. Food, as provided in and subject to the conditions of article 3 of
5 this chapter and section 42-5074.

6 16. Items purchased with United States department of agriculture food
7 stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat.
8 958) or food instruments issued under section 17 of the child nutrition act
9 (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code
10 section 1786).

11 17. Textbooks by any bookstore that are required by any state
12 university or community college.

13 18. Food and drink to a person who is engaged in business which is
14 classified under the restaurant classification and which provides such food
15 and drink without monetary charge to its employees for their own consumption
16 on the premises during the employees' hours of employment.

17 19. Articles of food, drink or condiment and accessory tangible
18 personal property to a school district if such articles and accessory
19 tangible personal property are to be prepared and served to persons for
20 consumption on the premises of a public school within the district during
21 school hours.

22 20. Lottery tickets or shares pursuant to title 5, chapter 5,
23 article 1.

24 21. The sale of precious metal bullion and monetized bullion to the
25 ultimate consumer, but the sale of coins or other forms of money for
26 manufacture into jewelry or works of art is subject to the tax. For the
27 purposes of this paragraph:

28 (a) "Monetized bullion" means coins and other forms of money which are
29 manufactured from gold, silver or other metals and which have been or are
30 used as a medium of exchange in this or another state, the United States or a
31 foreign nation.

32 (b) "Precious metal bullion" means precious metal, including gold,
33 silver, platinum, rhodium and palladium, which has been smelted or refined so
34 that its value depends on its contents and not on its form.

35 22. Motor vehicle fuel and use fuel which are subject to a tax imposed
36 under title 28, chapter 16, article 1, sales of use fuel to a holder of a
37 valid single trip use fuel tax permit issued under section 28-5739, sales of
38 aviation fuel which are subject to the tax imposed under section 28-8344 and
39 sales of jet fuel which are subject to the tax imposed under article 8 of
40 this chapter.

41 23. Tangible personal property sold to a person engaged in the business
42 of leasing or renting such property under the personal property rental
43 classification if such property is to be leased or rented by such person.

1 24. Tangible personal property sold in interstate or foreign commerce
2 if prohibited from being so taxed by the Constitution of the United States or
3 the constitution of this state.

4 25. Tangible personal property sold to:

5 (a) A qualifying hospital as defined in section 42-5001.

6 (b) A qualifying health care organization as defined in section
7 42-5001 if the tangible personal property is used by the organization solely
8 to provide health and medical related educational and charitable services.

9 (c) A qualifying health care organization as defined in section
10 42-5001 if the organization is dedicated to providing educational,
11 therapeutic, rehabilitative and family medical education training for blind,
12 visually impaired and multihandicapped children from the time of birth to age
13 twenty-one.

14 (d) A qualifying community health center as defined in section
15 42-5001.

16 (e) A nonprofit charitable organization that has qualified under
17 section 501(c)(3) of the internal revenue code and that regularly serves
18 meals to the needy and indigent on a continuing basis at no cost.

19 (f) For taxable periods beginning from and after June 30, 2001, a
20 nonprofit charitable organization that has qualified under section 501(c)(3)
21 of the internal revenue code and that provides residential apartment housing
22 for low income persons over sixty-two years of age in a facility that
23 qualifies for a federal housing subsidy, if the tangible personal property is
24 used by the organization solely to provide residential apartment housing for
25 low income persons over sixty-two years of age in a facility that qualifies
26 for a federal housing subsidy.

27 26. Magazines or other periodicals or other publications by this state
28 to encourage tourist travel.

29 27. Tangible personal property sold to a person that is subject to tax
30 under this article by reason of being engaged in business classified under
31 the prime contracting classification under section 42-5075, or to a
32 subcontractor working under the control of a prime contractor that is subject
33 to tax under article 1 of this chapter, if the property so sold is any of the
34 following:

35 (a) Incorporated or fabricated by the person into any real property,
36 structure, project, development or improvement as part of the business.

37 (b) Used in environmental response or remediation activities under
38 section 42-5075, subsection B, paragraph 6.

39 (c) Incorporated or fabricated by the person into any lake facility
40 development in a commercial enhancement reuse district under conditions
41 prescribed for the deduction allowed by section 42-5075, subsection B,
42 paragraph 8.

43 28. The sale of a motor vehicle to:

44 (a) A nonresident of this state if the purchaser's state of residence
45 does not allow a corresponding use tax exemption to the tax imposed by

1 article 1 of this chapter and if the nonresident has secured a special ninety
2 day nonresident registration permit for the vehicle as prescribed by sections
3 28-2154 and 28-2154.01.

4 (b) An enrolled member of an Indian tribe who resides on the Indian
5 reservation established for that tribe.

6 29. Tangible personal property purchased in this state by a nonprofit
7 charitable organization that has qualified under section 501(c)(3) of the
8 United States internal revenue code and that engages in and uses such
9 property exclusively in programs for mentally or physically handicapped
10 persons if the programs are exclusively for training, job placement,
11 rehabilitation or testing.

12 30. Sales of tangible personal property by a nonprofit organization
13 that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6)
14 of the internal revenue code if the organization is associated with a major
15 league baseball team or a national touring professional golfing association
16 and no part of the organization's net earnings inures to the benefit of any
17 private shareholder or individual.

18 31. Sales of commodities, as defined by title 7 United States Code
19 section 2, that are consigned for resale in a warehouse in this state in or
20 from which the commodity is deliverable on a contract for future delivery
21 subject to the rules of a commodity market regulated by the United States
22 commodity futures trading commission.

23 32. Sales of tangible personal property by a nonprofit organization
24 that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
25 501(c)(7) or 501(c)(8) of the internal revenue code if the organization
26 sponsors or operates a rodeo featuring primarily farm and ranch animals and
27 no part of the organization's net earnings inures to the benefit of any
28 private shareholder or individual.

29 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
30 propagative material to persons who use those items to commercially produce
31 agricultural, horticultural, viticultural or floricultural crops in this
32 state.

33 34. Machinery, equipment, technology or related supplies that are only
34 useful to assist a person who is physically disabled as defined in section
35 46-191, has a developmental disability as defined in section 36-551 or has a
36 head injury as defined in section 41-3201 to be more independent and
37 functional.

38 35. Sales of tangible personal property that is shipped or delivered
39 directly to a destination outside the United States for use in that foreign
40 country.

41 36. Sales of natural gas or liquefied petroleum gas used to propel a
42 motor vehicle.

43 37. Paper machine clothing, such as forming fabrics and dryer felts,
44 sold to a paper manufacturer and directly used or consumed in paper
45 manufacturing.

1 38. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity
2 sold to a qualified environmental technology manufacturer, producer or
3 processor as defined in section 41-1514.02 and directly used or consumed in
4 the generation or provision of on-site power or energy solely for
5 environmental technology manufacturing, producing or processing or
6 environmental protection. This paragraph shall apply for fifteen full
7 consecutive calendar or fiscal years from the date the first paper
8 manufacturing machine is placed in service. In the case of an environmental
9 technology manufacturer, producer or processor who does not manufacture
10 paper, the time period shall begin with the date the first manufacturing,
11 processing or production equipment is placed in service.

12 39. Sales of liquid, solid or gaseous chemicals used in manufacturing,
13 processing, fabricating, mining, refining, metallurgical operations, research
14 and development and, beginning on January 1, 1999, printing, if using or
15 consuming the chemicals, alone or as part of an integrated system of
16 chemicals, involves direct contact with the materials from which the product
17 is produced for the purpose of causing or permitting a chemical or physical
18 change to occur in the materials as part of the production process. This
19 paragraph does not include chemicals that are used or consumed in activities
20 such as packaging, storage or transportation but does not affect any
21 deduction for such chemicals that is otherwise provided by this section. For
22 the purposes of this paragraph, "printing" means a commercial printing
23 operation and includes job printing, engraving, embossing, copying and
24 bookbinding.

25 40. Through December 31, 1994, personal property liquidation
26 transactions, conducted by a personal property liquidator. From and after
27 December 31, 1994, personal property liquidation transactions shall be
28 taxable under this section provided that nothing in this subsection shall be
29 construed to authorize the taxation of casual activities or transactions
30 under this chapter. For the purposes of this paragraph:

31 (a) "Personal property liquidation transaction" means a sale of
32 personal property made by a personal property liquidator acting solely on
33 behalf of the owner of the personal property sold at the dwelling of the
34 owner or upon the death of any owner, on behalf of the surviving spouse, if
35 any, any devisee or heir or the personal representative of the estate of the
36 deceased, if one has been appointed.

37 (b) "Personal property liquidator" means a person who is retained to
38 conduct a sale in a personal property liquidation transaction.

39 41. Sales of food, drink and condiment for consumption within the
40 premises of any prison, jail or other institution under the jurisdiction of
41 the state department of corrections, the department of public safety, the
42 department of juvenile corrections or a county sheriff.

43 42. A motor vehicle and any repair and replacement parts and tangible
44 personal property becoming a part of such motor vehicle sold to a motor

1 carrier who is subject to a fee prescribed in title 28, chapter 16, article 4
2 and who is engaged in the business of leasing or renting such property.

3 43. Livestock and poultry feed, salts, vitamins and other additives for
4 livestock or poultry consumption that are sold to persons who are engaged in
5 producing livestock, poultry, or livestock or poultry products or who are
6 engaged in feeding livestock or poultry commercially. For the purposes of
7 this paragraph, "poultry" includes ratites.

8 44. Sales of implants used as growth promotants and injectable
9 medicines, not already exempt under paragraph 8 of this subsection, for
10 livestock or poultry owned by or in possession of persons who are engaged in
11 producing livestock, poultry, or livestock or poultry products or who are
12 engaged in feeding livestock or poultry commercially. For the purposes of
13 this paragraph, "poultry" includes ratites.

14 45. Sales of motor vehicles at auction to nonresidents of this state
15 for use outside this state if the vehicles are shipped or delivered out of
16 this state, regardless of where title to the motor vehicles passes or its
17 free on board point.

18 46. Tangible personal property sold to a person engaged in business and
19 subject to tax under the transient lodging classification if the tangible
20 personal property is a personal hygiene item or articles used by human beings
21 for food, drink or condiment, except alcoholic beverages, which are furnished
22 without additional charge to and intended to be consumed by the transient
23 during the transient's occupancy.

24 47. Sales of alternative fuel, as defined in section 1-215, to a used
25 oil fuel burner who has received a permit to burn used oil or used oil fuel
26 under section 49-426 or 49-480.

27 48. Sales of materials that are purchased by or for publicly funded
28 libraries including school district libraries, charter school libraries,
29 community college libraries, state university libraries or federal, state,
30 county or municipal libraries for use by the public as follows:

31 (a) Printed or photographic materials, beginning August 7, 1985.

32 (b) Electronic or digital media materials, beginning July 17, 1994.

33 49. Tangible personal property sold to a commercial airline and
34 consisting of food, beverages and condiments and accessories used for serving
35 the food and beverages, if those items are to be provided without additional
36 charge to passengers for consumption in flight. For the purposes of this
37 paragraph, "commercial airline" means a person holding a federal certificate
38 of public convenience and necessity or foreign air carrier permit for air
39 transportation to transport persons, property or United States mail in
40 intrastate, interstate or foreign commerce.

41 50. Sales of alternative fuel vehicles if the vehicle was manufactured
42 as a diesel fuel vehicle and converted to operate on alternative fuel and
43 equipment that is installed in a conventional diesel fuel motor vehicle to
44 convert the vehicle to operate on an alternative fuel, as defined in section
45 1-215.

1 51. Sales of any spirituous, vinous or malt liquor by a person that is
2 licensed in this state as a wholesaler by the department of liquor licenses
3 and control pursuant to title 4, chapter 2, article 1.

4 52. Sales of tangible personal property to be incorporated or installed
5 as part of environmental response or remediation activities under section
6 42-5075, subsection B, paragraph 6.

7 53. Sales of tangible personal property by a nonprofit organization
8 that is exempt from taxation under section 501(c)(6) of the internal revenue
9 code if the organization produces, organizes or promotes cultural or civic
10 related festivals or events and no part of the organization's net earnings
11 inures to the benefit of any private shareholder or individual.

12 54. Through August 31, 2014, sales of Arizona centennial medallions by
13 the historical advisory commission.

14 55. SOFTWARE ELECTRONIC MEDIA, DIGITAL MEDIA OR INTERNET APPLICATION
15 SERVICES THAT ARE DESIGNED TO ASSESS AND PROMOTE STUDENT LEARNING TO ANY
16 SCHOOL DISTRICT, CHARTER SCHOOL, COMMUNITY COLLEGE OR STATE UNIVERSITY.

17 B. In addition to the deductions from the tax base prescribed by
18 subsection A of this section, the gross proceeds of sales or gross income
19 derived from sales of the following categories of tangible personal property
20 shall be deducted from the tax base:

21 1. Machinery, or equipment, used directly in manufacturing,
22 processing, fabricating, job printing, refining or metallurgical operations.
23 The terms "manufacturing", "processing", "fabricating", "job printing",
24 "refining" and "metallurgical" as used in this paragraph refer to and include
25 those operations commonly understood within their ordinary meaning.
26 "Metallurgical operations" includes leaching, milling, precipitating,
27 smelting and refining.

28 2. Mining machinery, or equipment, used directly in the process of
29 extracting ores or minerals from the earth for commercial purposes, including
30 equipment required to prepare the materials for extraction and handling,
31 loading or transporting such extracted material to the surface. "Mining"
32 includes underground, surface and open pit operations for extracting ores and
33 minerals.

34 3. Tangible personal property sold to persons engaged in business
35 classified under the telecommunications classification and consisting of
36 central office switching equipment, switchboards, private branch exchange
37 equipment, microwave radio equipment and carrier equipment including optical
38 fiber, coaxial cable and other transmission media which are components of
39 carrier systems.

40 4. Machinery, equipment or transmission lines used directly in
41 producing or transmitting electrical power, but not including distribution.
42 Transformers and control equipment used at transmission substation sites
43 constitute equipment used in producing or transmitting electrical power.

1 5. Neat animals, horses, asses, sheep, ratites, swine or goats used or
2 to be used as breeding or production stock, including sales of breedings or
3 ownership shares in such animals used for breeding or production.

4 6. Pipes or valves four inches in diameter or larger used to transport
5 oil, natural gas, artificial gas, water or coal slurry, including compressor
6 units, regulators, machinery and equipment, fittings, seals and any other
7 part that is used in operating the pipes or valves.

8 7. Aircraft, navigational and communication instruments and other
9 accessories and related equipment sold to:

10 (a) A person holding a federal certificate of public convenience and
11 necessity, a supplemental air carrier certificate under federal aviation
12 regulations (14 Code of Federal Regulations part 121) or a foreign air
13 carrier permit for air transportation for use as or in conjunction with or
14 becoming a part of aircraft to be used to transport persons, property or
15 United States mail in intrastate, interstate or foreign commerce.

16 (b) Any foreign government for use by such government outside of this
17 state.

18 (c) Persons who are not residents of this state and who will not use
19 such property in this state other than in removing such property from this
20 state. This subdivision also applies to corporations that are not
21 incorporated in this state, regardless of maintaining a place of business in
22 this state, if the principal corporate office is located outside this state
23 and the property will not be used in this state other than in removing the
24 property from this state.

25 8. Machinery, tools, equipment and related supplies used or consumed
26 directly in repairing, remodeling or maintaining aircraft, aircraft engines
27 or aircraft component parts by or on behalf of a certificated or licensed
28 carrier of persons or property.

29 9. Railroad rolling stock, rails, ties and signal control equipment
30 used directly to transport persons or property.

31 10. Machinery or equipment used directly to drill for oil or gas or
32 used directly in the process of extracting oil or gas from the earth for
33 commercial purposes.

34 11. Buses or other urban mass transit vehicles which are used directly
35 to transport persons or property for hire or pursuant to a governmentally
36 adopted and controlled urban mass transportation program and which are sold
37 to bus companies holding a federal certificate of convenience and necessity
38 or operated by any city, town or other governmental entity or by any person
39 contracting with such governmental entity as part of a governmentally adopted
40 and controlled program to provide urban mass transportation.

41 12. Groundwater measuring devices required under section 45-604.

42 13. New machinery and equipment consisting of tractors, tractor-drawn
43 implements, self-powered implements, machinery and equipment necessary for
44 extracting milk, and machinery and equipment necessary for cooling milk and
45 livestock, and drip irrigation lines not already exempt under paragraph 6 of

1 this subsection and that are used for commercial production of agricultural,
2 horticultural, viticultural and floricultural crops and products in this
3 state. For the purposes of this paragraph:

4 (a) "New machinery and equipment" means machinery and equipment which
5 have never been sold at retail except pursuant to leases or rentals which do
6 not total two years or more.

7 (b) "Self-powered implements" includes machinery and equipment that
8 are electric-powered.

9 14. Machinery or equipment used in research and development. For the
10 purposes of this paragraph, "research and development" means basic and
11 applied research in the sciences and engineering, and designing, developing
12 or testing prototypes, processes or new products, including research and
13 development of computer software that is embedded in or an integral part of
14 the prototype or new product or that is required for machinery or equipment
15 otherwise exempt under this section to function effectively. Research and
16 development do not include manufacturing quality control, routine consumer
17 product testing, market research, sales promotion, sales service, research in
18 social sciences or psychology, computer software research that is not
19 included in the definition of research and development, or other
20 nontechnological activities or technical services.

21 15. Machinery and equipment that are purchased by or on behalf of the
22 owners of a soundstage complex and primarily used for motion picture,
23 multimedia or interactive video production in the complex. This paragraph
24 applies only if the initial construction of the soundstage complex begins
25 after June 30, 1996 and before January 1, 2002 and the machinery and
26 equipment are purchased before the expiration of five years after the start
27 of initial construction. For the purposes of this paragraph:

28 (a) "Motion picture, multimedia or interactive video production"
29 includes products for theatrical and television release, educational
30 presentations, electronic retailing, documentaries, music videos, industrial
31 films, CD-ROM, video game production, commercial advertising and television
32 episode production and other genres that are introduced through developing
33 technology.

34 (b) "Soundstage complex" means a facility of multiple stages including
35 production offices, construction shops and related areas, prop and costume
36 shops, storage areas, parking for production vehicles and areas that are
37 leased to businesses that complement the production needs and orientation of
38 the overall facility.

39 16. Tangible personal property that is used by either of the following
40 to receive, store, convert, produce, generate, decode, encode, control or
41 transmit telecommunications information:

42 (a) Any direct broadcast satellite television or data transmission
43 service that operates pursuant to 47 Code of Federal Regulations parts 25 and
44 100.

1 (b) Any satellite television or data transmission facility, if both of
2 the following conditions are met:

3 (i) Over two-thirds of the transmissions, measured in megabytes,
4 transmitted by the facility during the test period were transmitted to or on
5 behalf of one or more direct broadcast satellite television or data
6 transmission services that operate pursuant to 47 Code of Federal Regulations
7 parts 25 and 100.

8 (ii) Over two-thirds of the transmissions, measured in megabytes,
9 transmitted by or on behalf of those direct broadcast television or data
10 transmission services during the test period were transmitted by the facility
11 to or on behalf of those services.

12 For the purposes of subdivision (b) of this paragraph, "test period" means
13 the three hundred sixty-five day period beginning on the later of the date on
14 which the tangible personal property is purchased or the date on which the
15 direct broadcast satellite television or data transmission service first
16 transmits information to its customers.

17 17. Clean rooms that are used for manufacturing, processing,
18 fabrication or research and development, as defined in paragraph 14 of this
19 subsection, of semiconductor products. For the purposes of this paragraph,
20 "clean room" means all property that comprises or creates an environment
21 where humidity, temperature, particulate matter and contamination are
22 precisely controlled within specified parameters, without regard to whether
23 the property is actually contained within that environment or whether any of
24 the property is affixed to or incorporated into real property. Clean room:

25 (a) Includes the integrated systems, fixtures, piping, movable
26 partitions, lighting and all property that is necessary or adapted to reduce
27 contamination or to control airflow, temperature, humidity, chemical purity
28 or other environmental conditions or manufacturing tolerances, as well as the
29 production machinery and equipment operating in conjunction with the clean
30 room environment.

31 (b) Does not include the building or other permanent, nonremovable
32 component of the building that houses the clean room environment.

33 18. Machinery and equipment used directly in the feeding of poultry,
34 the environmental control of housing for poultry, the movement of eggs within
35 a production and packaging facility or the sorting or cooling of eggs. This
36 exemption does not apply to vehicles used for transporting eggs.

37 19. Machinery or equipment, including related structural components,
38 that is employed in connection with manufacturing, processing, fabricating,
39 job printing, refining, mining, natural gas pipelines, metallurgical
40 operations, telecommunications, producing or transmitting electricity or
41 research and development and that is used directly to meet or exceed rules or
42 regulations adopted by the federal energy regulatory commission, the United
43 States environmental protection agency, the United States nuclear regulatory
44 commission, the Arizona department of environmental quality or a political

1 subdivision of this state to prevent, monitor, control or reduce land, water
2 or air pollution.

3 20. Machinery and equipment that are sold to a person engaged in the
4 commercial production of livestock, livestock products or agricultural,
5 horticultural, viticultural or floricultural crops or products in this state
6 and that are used directly and primarily to prevent, monitor, control or
7 reduce air, water or land pollution.

8 21. Machinery or equipment that enables a television station to
9 originate and broadcast or to receive and broadcast digital television
10 signals and that was purchased to facilitate compliance with the
11 telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States
12 Code section 336) and the federal communications commission order issued
13 April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does
14 not exempt any of the following:

15 (a) Repair or replacement parts purchased for the machinery or
16 equipment described in this paragraph.

17 (b) Machinery or equipment purchased to replace machinery or equipment
18 for which an exemption was previously claimed and taken under this paragraph.

19 (c) Any machinery or equipment purchased after the television station
20 has ceased analog broadcasting, or purchased after November 1, 2009,
21 whichever occurs first.

22 22. Qualifying equipment that is purchased from and after June 30, 2004
23 through June 30, 2014 by a qualified business under section 41-1516 for
24 harvesting or the initial processing of qualifying forest products removed
25 from qualifying projects as defined in section 41-1516. To qualify for this
26 deduction, the qualified business at the time of purchase must present its
27 certification approved by the department.

28 23. Machinery, equipment and other tangible personal property used
29 directly in motion picture production by a motion picture production company.
30 To qualify for this deduction, at the time of purchase, the motion picture
31 production company must present to the retailer its certificate that is
32 issued pursuant to section 42-5009, subsection H and that establishes its
33 qualification for the deduction.

34 C. The deductions provided by subsection B of this section do not
35 include sales of:

36 1. Expendable materials. For the purposes of this paragraph,
37 expendable materials do not include any of the categories of tangible
38 personal property specified in subsection B of this section regardless of the
39 cost or useful life of that property.

40 2. Janitorial equipment and hand tools.

41 3. Office equipment, furniture and supplies.

42 4. Tangible personal property used in selling or distributing
43 activities, other than the telecommunications transmissions described in
44 subsection B, paragraph 16 of this section.

1 5. Motor vehicles required to be licensed by this state, except buses
2 or other urban mass transit vehicles specifically exempted pursuant to
3 subsection B, paragraph 11 of this section, without regard to the use of such
4 motor vehicles.

5 6. Shops, buildings, docks, depots and all other materials of whatever
6 kind or character not specifically included as exempt.

7 7. Motors and pumps used in drip irrigation systems.

8 D. In addition to the deductions from the tax base prescribed by
9 subsection A of this section, there shall be deducted from the tax base the
10 gross proceeds of sales or gross income derived from sales of machinery,
11 equipment, materials and other tangible personal property used directly and
12 predominantly to construct a qualified environmental technology
13 manufacturing, producing or processing facility as described in section
14 41-1514.02. This subsection applies for ten full consecutive calendar or
15 fiscal years after the start of initial construction.

16 E. In computing the tax base, gross proceeds of sales or gross income
17 from retail sales of heavy trucks and trailers does not include any amount
18 attributable to federal excise taxes imposed by 26 United States Code section
19 4051.

20 F. In computing the tax base, gross proceeds of sales or gross income
21 from the sale of use fuel, as defined in section 28-5601, does not include
22 any amount attributable to federal excise taxes imposed by 26 United States
23 Code section 4091.

24 G. If a person is engaged in an occupation or business to which
25 subsection A of this section applies, the person's books shall be kept so as
26 to show separately the gross proceeds of sales of tangible personal property
27 and the gross income from sales of services, and if not so kept the tax shall
28 be imposed on the total of the person's gross proceeds of sales of tangible
29 personal property and gross income from services.

30 H. If a person is engaged in the business of selling tangible personal
31 property at both wholesale and retail, the tax under this section applies
32 only to the gross proceeds of the sales made other than at wholesale if the
33 person's books are kept so as to show separately the gross proceeds of sales
34 of each class, and if the books are not so kept, the tax under this section
35 applies to the gross proceeds of every sale so made.

36 I. A person who engages in manufacturing, baling, crating, boxing,
37 barreling, canning, bottling, sacking, preserving, processing or otherwise
38 preparing for sale or commercial use any livestock, agricultural or
39 horticultural product or any other product, article, substance or commodity
40 and who sells the product of such business at retail in this state is deemed,
41 as to such sales, to be engaged in business classified under the retail
42 classification. This subsection does not apply to businesses classified
43 under the:

44 1. Transporting classification.

45 2. Utilities classification.

- 1 3. Telecommunications classification.
- 2 4. Pipeline classification.
- 3 5. Private car line classification.
- 4 6. Publication classification.
- 5 7. Job printing classification.
- 6 8. Prime contracting classification.
- 7 9. Owner builder sales classification.
- 8 10. Restaurant classification.
- 9 J. The gross proceeds of sales or gross income derived from the
- 10 following shall be deducted from the tax base for the retail classification:
- 11 1. Sales made directly to the United States government or its
- 12 departments or agencies by a manufacturer, modifier, assembler or repairer.
- 13 2. Sales made directly to a manufacturer, modifier, assembler or
- 14 repairer if such sales are of any ingredient or component part of products
- 15 sold directly to the United States government or its departments or agencies
- 16 by the manufacturer, modifier, assembler or repairer.
- 17 3. Overhead materials or other tangible personal property that is used
- 18 in performing a contract between the United States government and a
- 19 manufacturer, modifier, assembler or repairer, including property used in
- 20 performing a subcontract with a government contractor who is a manufacturer,
- 21 modifier, assembler or repairer, to which title passes to the government
- 22 under the terms of the contract or subcontract.
- 23 4. Sales of overhead materials or other tangible personal property to
- 24 a manufacturer, modifier, assembler or repairer if the gross proceeds of
- 25 sales or gross income derived from the property by the manufacturer,
- 26 modifier, assembler or repairer will be exempt under paragraph 3 of this
- 27 subsection.
- 28 K. There shall be deducted from the tax base fifty per cent of the
- 29 gross proceeds or gross income from any sale of tangible personal property
- 30 made directly to the United States government or its departments or agencies,
- 31 which is not deducted under subsection J of this section.
- 32 L. The department shall require every person claiming a deduction
- 33 provided by subsection J or K of this section to file on forms prescribed by
- 34 the department at such times as the department directs a sworn statement
- 35 disclosing the name of the purchaser and the exact amount of sales on which
- 36 the exclusion or deduction is claimed.
- 37 M. In computing the tax base, gross proceeds of sales or gross income
- 38 does not include:
- 39 1. A manufacturer's cash rebate on the sales price of a motor vehicle
- 40 if the buyer assigns the buyer's right in the rebate to the retailer.
- 41 2. The waste tire disposal fee imposed pursuant to section 44-1302.
- 42 N. There shall be deducted from the tax base the amount received from
- 43 sales of solar energy devices. The retailer shall register with the
- 44 department as a solar energy retailer. By registering, the retailer

1 acknowledges that it will make its books and records relating to sales of
2 solar energy devices available to the department for examination.

3 O. In computing the tax base in the case of the sale or transfer of
4 wireless telecommunications equipment as an inducement to a customer to enter
5 into or continue a contract for telecommunications services that are taxable
6 under section 42-5064, gross proceeds of sales or gross income does not
7 include any sales commissions or other compensation received by the retailer
8 as a result of the customer entering into or continuing a contract for the
9 telecommunications services.

10 P. For the purposes of this section, a sale of wireless
11 telecommunications equipment to a person who holds the equipment for sale or
12 transfer to a customer as an inducement to enter into or continue a contract
13 for telecommunications services that are taxable under section 42-5064 is
14 considered to be a sale for resale in the regular course of business.

15 Q. Retail sales of prepaid calling cards or prepaid authorization
16 numbers for telecommunications services, including sales of reauthorization
17 of a prepaid card or authorization number, are subject to tax under this
18 section.

19 R. For the purposes of this section, the diversion of gas from a
20 pipeline by a person engaged in the business of:

21 1. Operating a natural or artificial gas pipeline, for the sole
22 purpose of fueling compressor equipment to pressurize the pipeline, is not a
23 sale of the gas to the operator of the pipeline.

24 2. Converting natural gas into liquefied natural gas, for the sole
25 purpose of fueling compressor equipment used in the conversion process, is
26 not a sale of gas to the operator of the compressor equipment.

27 S. If a seller is entitled to a deduction pursuant to subsection B,
28 paragraph 16, subdivision (b) of this section, the department may require the
29 purchaser to establish that the requirements of subsection B, paragraph 16,
30 subdivision (b) of this section have been satisfied. If the purchaser cannot
31 establish that the requirements of subsection B, paragraph 16, subdivision
32 (b) of this section have been satisfied, the purchaser is liable in an amount
33 equal to any tax, penalty and interest which the seller would have been
34 required to pay under article 1 of this chapter if the seller had not made a
35 deduction pursuant to subsection B, paragraph 16, subdivision (b) of this
36 section. Payment of the amount under this subsection exempts the purchaser
37 from liability for any tax imposed under article 4 of this chapter and
38 related to the tangible personal property purchased. The amount shall be
39 treated as transaction privilege tax to the purchaser and as tax revenues
40 collected from the seller to designate the distribution base pursuant to
41 section 42-5029.

42 T. For the purposes of section 42-5032.01, the department shall
43 separately account for revenues collected under the retail classification
44 from businesses selling tangible personal property at retail:

1 1. On the premises of a multipurpose facility that is owned, leased or
2 operated by the tourism and sports authority pursuant to title 5, chapter 8.

3 2. At professional football contests that are held in a stadium
4 located on the campus of an institution under the jurisdiction of the Arizona
5 board of regents.

6 U. In computing the tax base for the sale of a motor vehicle to a
7 nonresident of this state, if the purchaser's state of residence allows a
8 corresponding use tax exemption to the tax imposed by article 1 of this
9 chapter and the rate of the tax in the purchaser's state of residence is
10 lower than the rate prescribed in article 1 of this chapter or if the
11 purchaser's state of residence does not impose an excise tax, and the
12 nonresident has secured a special ninety day nonresident registration permit
13 for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall
14 be deducted from the tax base a portion of the gross proceeds or gross income
15 from the sale so that the amount of transaction privilege tax that is paid in
16 this state is equal to the excise tax that is imposed by the purchaser's
17 state of residence on the nonexempt sale or use of the motor vehicle.

18 V. For the purposes of this section:

19 1. "Aircraft" includes:

20 (a) An airplane flight simulator that is approved by the federal
21 aviation administration for use as a phase II or higher flight simulator
22 under appendix H, 14 Code of Federal Regulations part 121.

23 (b) Tangible personal property that is permanently affixed or attached
24 as a component part of an aircraft that is owned or operated by a
25 certificated or licensed carrier of persons or property.

26 2. "Other accessories and related equipment" includes aircraft
27 accessories and equipment such as ground service equipment that physically
28 contact aircraft at some point during the overall carrier operation.

29 3. "Selling at retail" means a sale for any purpose other than for
30 resale in the regular course of business in the form of tangible personal
31 property, but transfer of possession, lease and rental as used in the
32 definition of sale mean only such transactions as are found on investigation
33 to be in lieu of sales as defined without the words lease or rental.

34 W. For the purposes of subsection J of this section:

35 1. "Assembler" means a person who unites or combines products, wares
36 or articles of manufacture so as to produce a change in form or substance
37 without changing or altering the component parts.

38 2. "Manufacturer" means a person who is principally engaged in the
39 fabrication, production or manufacture of products, wares or articles for use
40 from raw or prepared materials, imparting to those materials new forms,
41 qualities, properties and combinations.

42 3. "Modifier" means a person who reworks, changes or adds to products,
43 wares or articles of manufacture.

44 4. "Overhead materials" means tangible personal property, the gross
45 proceeds of sales or gross income derived from which would otherwise be

1 included in the retail classification, and which are used or consumed in the
2 performance of a contract, the cost of which is charged to an overhead
3 expense account and allocated to various contracts based upon generally
4 accepted accounting principles and consistent with government contract
5 accounting standards.

6 5. "Repairer" means a person who restores or renews products, wares or
7 articles of manufacture.

8 6. "Subcontract" means an agreement between a contractor and any
9 person who is not an employee of the contractor for furnishing of supplies or
10 services that, in whole or in part, are necessary to the performance of one
11 or more government contracts, or under which any portion of the contractor's
12 obligation under one or more government contracts is performed, undertaken or
13 assumed and that includes provisions causing title to overhead materials or
14 other tangible personal property used in the performance of the subcontract
15 to pass to the government or that includes provisions incorporating such
16 title passing clauses in a government contract into the subcontract.

17 Sec. 2. Section 42-5064, Arizona Revised Statutes, is amended to read:
18 42-5064. Telecommunications classification; definitions

19 A. The telecommunications classification is comprised of the business
20 of providing intrastate telecommunications services. The telecommunications
21 classification does not include:

22 1. Sales of intrastate telecommunications services by a cable
23 television system as defined in section 9-505 or by a microwave television
24 transmission system that transmits television programming to multiple
25 subscribers and that is operated pursuant to 47 Code of Federal Regulations
26 parts 21 and 74.

27 2. Sales of internet access OR APPLICATION services to the person's
28 subscribers and customers.

29 B. The tax base for the telecommunications classification is the gross
30 proceeds of sales or gross income derived from the business, including the
31 gross income derived from tolls, subscriptions and services on behalf of
32 subscribers or from the publication of a directory of the names of
33 subscribers. However, the gross proceeds of sales or gross income derived
34 from the following shall be deducted from the tax base:

35 1. Sales of intrastate telecommunications services to:

36 (a) Other persons engaged in businesses classified under the
37 telecommunications classification for use in such business.

38 (b) A direct broadcast satellite television or data transmission
39 service that operates pursuant to 47 Code of Federal Regulations parts 25 and
40 100 for use in its direct broadcast satellite television or data transmission
41 operation by a facility described in section 42-5061, subsection B, paragraph
42 16, subdivision (b).

43 2. End user common line charges established by federal communications
44 commission regulations (47 Code of Federal Regulations section 69.104(a)).

1 3. Carrier access charges established by federal communications
2 commission regulations (47 Code of Federal Regulations sections 69.105(a)
3 through 69.118).

4 4. Sales of direct broadcast satellite television services pursuant to
5 47 Code of Federal Regulations parts 25 and 100 by a direct broadcast
6 satellite television service that operates pursuant to 47 Code of Federal
7 Regulations parts 25 and 100.

8 5. Telecommunications services purchased with a prepaid calling card,
9 or a prepaid authorization number for telecommunications services, that is
10 taxable under section 42-5061.

11 C. A person that is engaged in a transient lodging business subject to
12 taxation under section 42-5070 and that provides telephone, fax or internet
13 access services to its customers at an additional charge, which is separately
14 stated on the customer invoice, is considered to be engaged in business
15 subject to taxation under this section for the purposes of taxing the gross
16 proceeds of sales or gross income derived from providing those services.

17 D. The gross proceeds of sales or gross income derived from a bundled
18 transaction of services that are taxable pursuant to section 42-5023 are
19 subject to the following:

20 1. A telecommunications service provider who can reasonably identify
21 the portion of the sales price of the bundled transaction derived from
22 charges for nontaxable services is subject to tax only on the gross proceeds
23 of sales or gross income derived from the taxable services. For the purposes
24 of this section, the telecommunications service provider may elect to
25 reasonably identify the portion of the sales price of the bundled transaction
26 derived from charges for nontaxable services by using allocation percentages
27 derived from the telecommunications service provider's entire service area,
28 including territories outside of this state. On request, the department may
29 require the telecommunications service provider to provide this allocation
30 information. The reasonableness of the allocation is subject to audit by the
31 department.

32 2. Notwithstanding sections 42-1118, 42-1120 and 42-1121, the
33 telecommunications service provider shall waive the right to file a claim for
34 a refund of taxes paid on the bundled transaction if the taxes paid are based
35 on the allocation percentage the telecommunications service provider had
36 determined to be reasonable at the beginning of the tax period at issue.

37 3. The burden of proof is on the telecommunications service provider
38 to establish that the gross proceeds of sales or gross income is derived from
39 charges for nontaxable services.

40 E. For the purposes of this section:

41 1. "Bundled transaction" means a sale of multiple services in which
42 both of the following apply:

43 (a) The sale consists of both taxable and nontaxable services.

1 (b) The telecommunications service provider charges a customer one
2 sales price for all services that are sold instead of separately charging for
3 each individual service.

4 2. "Internet" means the computer and telecommunications facilities
5 that comprise the interconnected worldwide network of networks that employ
6 the transmission control protocol or internet protocol, or any predecessor or
7 successor protocol, to communicate information of all kinds by wire or radio.

8 3. "Internet access" means a service that enables users to access
9 content, information, electronic mail or other services over the internet.
10 Internet access does not include telecommunications services provided by a
11 common carrier.

12 4. "Intrastate telecommunications services" means transmitting signs,
13 signals, writings, images, sounds, messages, data or other information of any
14 nature by wire, radio waves, light waves or other electromagnetic means if
15 the information transmitted originates and terminates in this state.

16 Sec. 3. Section 42-5071, Arizona Revised Statutes, is amended to read:
17 42-5071. Personal property rental classification

18 A. The personal property rental classification is comprised of the
19 business of leasing or renting tangible personal property for a
20 consideration. The tax does not apply to:

21 1. Leasing or renting films, tapes or slides used by theaters or
22 movies, which are engaged in business under the amusement classification, or
23 used by television stations or radio stations.

24 2. Activities engaged in by the Arizona exposition and state fair
25 board or county fair commissions in connection with events sponsored by such
26 entities.

27 3. Leasing or renting tangible personal property by a parent
28 corporation to a subsidiary corporation or by a subsidiary corporation to
29 another subsidiary of the same parent corporation if taxes were paid under
30 this chapter on the gross proceeds or gross income accruing from the initial
31 sale of the tangible personal property. For the purposes of this paragraph,
32 "subsidiary" means a corporation of which at least eighty per cent of the
33 voting shares are owned by the parent corporation.

34 4. Operating coin operated washing, drying and dry cleaning machines
35 or coin operated car washing machines at establishments for the use of such
36 machines.

37 5. Leasing or renting tangible personal property for incorporation
38 into or comprising any part of a qualified environmental technology facility
39 as described in section 41-1514.02. This paragraph shall apply for ten full
40 consecutive calendar or fiscal years following the initial lease or rental by
41 each qualified environmental technology manufacturer, producer or processor.

42 6. Leasing or renting aircraft, flight simulators or similar training
43 equipment to students or staff by nonprofit, accredited educational
44 institutions that offer associate or baccalaureate degrees in aviation or
45 aerospace related fields.

1 7. Leasing or renting photographs, transparencies or other creative
2 works used by this state on internet web sites, in magazines or in other
3 publications that encourage tourism.

4 B. The tax base for the personal property rental classification is the
5 gross proceeds of sales or gross income derived from the business, but the
6 gross proceeds of sales or gross income derived from the following shall be
7 deducted from the tax base:

8 1. Reimbursements by the lessee to the lessor of a motor vehicle for
9 payments by the lessor of the applicable fees and taxes imposed by sections
10 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15,
11 article 2 and article IX, section 11, Constitution of Arizona, to the extent
12 such amounts are separately identified as such fees and taxes and are billed
13 to the lessee.

14 2. Leases or rentals of tangible personal property which, if it had
15 been purchased instead of leased or rented by the lessee, would have been
16 exempt under:

17 (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, ~~or~~
18 50 OR 55.

19 (b) Section 42-5061, subsection B, except that a lease or rental of
20 new machinery or equipment is not exempt pursuant to:

21 (i) Section 42-5061, subsection B, paragraph 13 if the lease is for
22 less than two years.

23 (ii) Section 42-5061, subsection B, paragraph 22 if the lease is for
24 less than five years.

25 (c) Section 42-5061, subsection J, paragraph 1.

26 (d) Section 42-5061, subsection N.

27 3. Motor vehicle fuel and use fuel that are subject to a tax imposed
28 under title 28, chapter 16, article 1, sales of use fuel to a holder of a
29 valid single trip use fuel tax permit issued under section 28-5739 and sales
30 of aviation fuel that are subject to the tax imposed under section 28-8344.

31 4. Leasing or renting a motor vehicle subject to and upon which the
32 fee has been paid under title 28, chapter 16, article 4.

33 5. Amounts received by a motor vehicle dealer for the first month of a
34 lease payment if the lease and the lease payment for the first month of the
35 lease are transferred to a third party leasing company.

36 C. Sales of tangible personal property to be leased or rented to a
37 person engaged in a business classified under the personal property rental
38 classification are deemed to be resale sales.

39 D. In computing the tax base, the gross proceeds of sales or gross
40 income from the lease or rental of a motor vehicle does not include any
41 amount attributable to the car rental surcharge under section 28-5810 or
42 48-4234.

1 E. Until December 31, 1988, leasing or renting animals for
2 recreational purposes is exempt from the tax imposed by this section.
3 Beginning January 1, 1989, the gross proceeds or gross income from leasing or
4 renting animals for recreational purposes is subject to taxation under this
5 section. Tax liabilities, penalties and interest paid for taxable periods
6 before January 1, 1989 shall not be refunded unless the taxpayer requesting
7 the refund provides proof satisfactory to the department that the monies paid
8 as taxes will be returned to the customer.

9 Sec. 4. Retroactivity

10 This act applies retroactively to taxable periods beginning from and
11 after December 31, 1999.